

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

No. 768

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### Introduced by Assembly Member Achadjian

February 21, 2013

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An act to amend Section ~~6600~~ 6608.5 of the Welfare and Institutions Code, relating to sexually violent predators.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 768, as amended, Achadjian. Sexually violent predators: ~~civil commitment.~~ *conditional release.*

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. *Existing law authorizes the conditional release of a sexually violent predator under specified circumstances.* Proposition 83 of the November 7, 2006, statewide general election, made various changes to the sexually violent predator civil commitment process. Proposition 83 permits the Legislature to amend its provisions, either by a  $\frac{2}{3}$  vote of the membership of each house, or by majority vote of the membership of each house if the amendments expand the scope of the application of the provisions of the proposition or increase the punishments or penalties provided in the proposition.

This bill would ~~make technical, nonsubstantive changes to these provisions~~ *prohibit a sexually violent predator who has been granted conditional release from being released as a transient in any county.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     **SECTION 1.** *Section 6608.5 of the Welfare and Institutions*  
2 *Code is amended to read:*

3     6608.5. (a) A person who is conditionally released pursuant  
4 to this article shall be placed in the county of the domicile of the  
5 person prior to the person's incarceration, unless the court finds  
6 that extraordinary circumstances require placement outside the  
7 county of domicile. *Under no circumstances shall a person who*  
8 *is granted conditional release be released as a transient in any*  
9 *county.*

10    (b) (1) For the purposes of this section, "county of domicile"  
11 means the county where the person has his or her true, fixed, and  
12 permanent home and principal residence and to which he or she  
13 has manifested the intention of returning whenever he or she is  
14 absent. For the purposes of determining the county of domicile,  
15 the court may consider information found on a California driver's  
16 license, California identification card, recent rent or utility receipt,  
17 printed personalized checks or other recent banking documents  
18 showing that person's name and address, or information contained  
19 in an arrest record, probation officer's report, trial transcript, or  
20 other court document. If no information can be identified or  
21 verified, the county of domicile of the individual shall be  
22 considered to be the county in which the person was arrested for  
23 the crime for which he or she was last incarcerated in the state  
24 prison or from which he or she was last returned from parole.

25    (2) In a case where the person committed a crime while being  
26 held for treatment in a state hospital, or while being confined in a  
27 state prison or local jail facility, the county wherein that facility  
28 was located shall not be considered the county of domicile unless  
29 the person resided in that county prior to being housed in the  
30 hospital, prison, or jail.

31    (c) For the purposes of this section, "extraordinary  
32 circumstances" means circumstances that would inordinately limit  
33 the department's ability to effect conditional release of the person  
34 in the county of domicile in accordance with Section 6608 or any  
35 other provision of this article, and the procedures described in  
36 Sections 1605 to 1610, inclusive, of the Penal Code.

37    (d) The county of domicile shall designate a county agency or  
38 program that will provide assistance and consultation in the process

of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) In recommending a specific placement for community outpatient treatment, the department or its designee shall consider all of the following:

(1) The concerns and proximity of the victim or the victim's next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

**SECTION 1.** Section 6600 of the Welfare and Institutions Code is amended to read:

~~6600. As used in this article, the following terms have the following meanings:~~

~~(a) (1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.~~

~~(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:~~

~~(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).~~

~~(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.~~

~~(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).~~

~~(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).~~

~~(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).~~

~~(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).~~

~~(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.~~

~~(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, pursuant to Section 1731.5.~~

~~(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.~~

~~(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals. Jurors shall be admonished that they may not find a person to be a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.~~

~~(4) The provisions of this section shall apply to a person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.~~

1     ~~(b) “Sexually violent offense” means the following acts when~~  
2     ~~committed by force, violence, duress, menace, fear of immediate~~  
3     ~~and unlawful bodily injury on the victim or another person, or~~  
4     ~~threatening to retaliate in the future against the victim or any other~~  
5     ~~person, and that are committed on, before, or after the effective~~  
6     ~~date of this article and result in a conviction or a finding of not~~  
7     ~~guilty by reason of insanity, as defined in subdivision (a): a felony~~  
8     ~~violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5,~~  
9     ~~or 289 of the Penal Code, or a felony violation of Section 207,~~  
10    ~~209, or 220 of the Penal Code, committed with the intent to commit~~  
11    ~~a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of~~  
12    ~~the Penal Code.~~

13    ~~(c) “Diagnosed mental disorder” includes a congenital or~~  
14    ~~acquired condition affecting the emotional or volitional capacity~~  
15    ~~that predisposes the person to the commission of criminal sexual~~  
16    ~~acts in a degree constituting the person a menace to the health and~~  
17    ~~safety of others.~~

18    ~~(d) “Danger to the health and safety of others” does not require~~  
19    ~~proof of a recent overt act while the offender is in custody.~~

20    ~~(e) “Predatory” means an act is directed toward a stranger, a~~  
21    ~~person of casual acquaintance with whom no substantial~~  
22    ~~relationship exists, or an individual with whom a relationship has~~  
23    ~~been established or promoted for the primary purpose of~~  
24    ~~victimization.~~

25    ~~(f) “Recent overt act” means a criminal act that manifests a~~  
26    ~~likelihood that the actor may engage in sexually violent predatory~~  
27    ~~criminal behavior.~~

28    ~~(g) Notwithstanding any other law and for purposes of this~~  
29    ~~section, a prior juvenile adjudication of a sexually violent offense~~  
30    ~~may constitute a prior conviction for which the person received a~~  
31    ~~determinate term if all of the following apply:~~

32    ~~(1) The juvenile was 16 years of age or older at the time he or~~  
33    ~~she committed the prior offense.~~

34    ~~(2) The prior offense is a sexually violent offense as specified~~  
35    ~~in subdivision (b).~~

36    ~~(3) The juvenile was adjudged a ward of the juvenile court~~  
37    ~~within the meaning of Section 602 because of the person’s~~  
38    ~~commission of the offense giving rise to the juvenile court~~  
39    ~~adjudication.~~

1     ~~(4) The juvenile was committed to the Department of~~  
2     ~~Corrections and Rehabilitation, Division of Juvenile Facilities, for~~  
3     ~~the sexually violent offense.~~

4     ~~(h) A minor adjudged a ward of the court for commission of an~~  
5     ~~offense that is defined as a sexually violent offense shall be entitled~~  
6     ~~to specific treatment as a sexual offender. The failure of a minor~~  
7     ~~to receive that treatment shall not constitute a defense or bar to a~~  
8     ~~determination that a person is a sexually violent predator within~~  
9     ~~the meaning of this article.~~